

POTPPOURRI

Department of Health and Hospitals  
Bureau of Health Services Financing

**Substantive Changes and Public Hearing Notification**  
**Direct Service Worker Registry**  
**(LAC 48:I.Chapter 92)**

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Bureau of Health Services Financing published a Notice of Intent in the December 20, 2015 edition of the *Louisiana Register* (LR 41:2721-2724) to amend LAC 48:I.Chapter 92. This Notice of Intent proposed to amend the provisions governing the DSW Registry in order to align the DSW Registry Rule with R.S. 40:2179-40:2179.1, and to provide information on how to access the DSW Registry online database for verification purposes.

The department conducted a public hearing on this Notice of Intent on January 28, 2016 to solicit comments and testimony on the proposed Rule. Upon further discussion with stakeholders, the department subsequently determined that further revisions to Chapter 92 were necessary, which resulted in non-technical, substantive changes to the December 20, 2015 Notice of Intent.

Taken together, all of these proposed revisions will closely align the proposed Rule with the Department's original intent and the concerns brought forth in discussions with

stakeholders after publication of the Notice of Intent. No fiscal or economic impact will result from the amendments proposed in this notice.

## **Title 48**

### **PUBLIC HEALTH-GENERAL Part I. General Administration Subpart 3. Health Standards**

#### **Chapter 92. Direct Service Worker Registry**

##### **Subchapter A. General Provisions**

##### **§9201. Definitions**

\*\*\*

*Activities of Daily Living (ADLs)*—the functions or tasks which are performed by an individual in a typical day, either independently or with supervision/assistance. Activities of daily living may include, but are not limited to, bathing, dressing, eating, grooming, walking, transferring and/or toileting).

*Assistance with Activities of Daily Living*—services that provide assistance with activities of daily living. Such assistance may be the actual performance of the task for the individual, or may provide hands-on assistance with the performance of the tasks, or may be include supervision and prompting to allow the individual to self-perform such tasks.

\*\*\*

*Direct Service Worker (DSW)*—an unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person. Functions performed may include, but are not limited to, assistance and training in activities of daily living, personal care services, and job-related supports. Examples of direct service workers employed or contracted in a licensed and/or certified health care setting include, but are not limited to:

1. - 13. ...

Note: Those persons who are listed on the Certified Nurse Aide Registry and who are employed as certified nurse aides in a licensed and/or certified nursing facility and/or a skilled nursing facility within a hospital are not included under these provisions as a direct service worker.

\*\*\*

*Elderly*—any adult over 75 years old or individuals over 65 years old who have functional impairments.

*Employed*—performance of a job or task for compensation, such as wages or a salary. An employed person may be one who is contracted or one who is directly hired for an on staff position.

\*\*\*

*Health Care Provider*-any health care facility, agency, or entity licensed and/or certified by DHH. Such entities may be referred to in other laws, statutes and regulations as providers, agencies, clinics, residential care units, homes or facilities. Health care providers include, but are not limited to, the following:

1. - 10. ...

*Health Standards Section (HSS)*-the section of the Department of Health and Hospitals responsible for the licensing and/or certification of health care providers.

\*\*\*

*Provider:*

1. an entity that furnishes care and services to consumers and has been licensed and/or certified by the department to operate in the state;

2. in the case of an authorized departmental self-directed program, provider shall be the entity or individual as specified by the program employing or contracting the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006), amended LR 33:95

(January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3175 (December 2012), LR 42:

**§9202. Introduction**

A. - B.6. ...

C. Licensed and/or certified health care providers shall access the registry to determine if there is a finding that a prospective hire or currently employed or contracted direct service worker has been determined to have committed abuse or neglect of an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired nor shall a current employee have continued employment with the licensed and/or certified health care provider.

D. All provisions of this Chapter, except Subchapter D, §9241-§9261, Medication Administration and Noncomplex Tasks in Home and Community-Based Settings, applies to any licensed and/or certified health care provider who employs or contracts direct service workers who provide personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person.

1. Exception. Home and community-based services providers are required to meet all provisions of this Chapter,

inclusive of Subchapter D, §9241-§9261, if the HCBS provider employs or contracts direct service workers who perform medication administration and noncomplex medical tasks in the HCBS setting.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:

### **Subchapter C. Provider Participation**

#### **§9231. Health Care Provider Responsibilities**

A. Prior to hiring any direct service worker or trainee, the licensed and/or certified health care provider shall:

1. - 2. ...

B. The health care provider shall have a written process to check the registry every six months to determine if any currently employed or contracted direct service worker or trainee has been placed on the registry with a finding that he/she has been determined to have committed abuse or neglect of

an individual being supported or misappropriated the individual's property or funds.

1. ...

2. If there is such a finding on the registry, the employee shall not have continued employment with the licensed and/or certified health care provider in accordance with the provisions of §9202.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:

#### **Subchapter D. Medication Administration and Noncomplex Tasks in Home and Community-Based Settings**

#### **§9243. General Requirements for the Performance of Medication Administration and Noncomplex Tasks in Home and Community-Based Settings**

A. ...

1. be employed or contracted by an agency licensed and/or certified by the Health Standards Section or employed as part of an authorized departmental self-directed program; and

A.2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.  
37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health  
and Hospitals, Bureau of Health Services Financing, LR 38:3177  
(December 2012), amended LR 42:

**§9245. Training Requirements for the Performance of  
Medication Administration and Noncomplex Tasks in Home and  
Community-Based Settings**

A. -C. ...

D. Any direct service worker currently employed or  
contracted to perform the procedures authorized by this Chapter  
shall complete the training required by this Subchapter no later  
than 12 months after promulgation of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S.  
37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health  
and Hospitals, Bureau of Health Services Financing, LR 38:3177  
(December 2012), amended LR 42:

**§9253. Registered Nurse Responsibilities**

A. - A.6. ...

7. completing and submitting the required  
documentation to the licensed and/or certified agency employing  
or contracting the direct service worker.



AUTHORITY NOTE: Promulgated in accordance with R.S.  
37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health  
and Hospitals, Bureau of Health Services Financing, LR 38:3178  
(December 2012), amended LR 42:

**§9257. Liability**

A. ...

B. Any physician licensed to practice medicine by the  
Louisiana State Board of Medical Examiners, whether or not the  
physician developed the person's plan of care, including but not  
limited to the prescribed medical regime, who is rendering  
professional medical care services shall not be liable for any  
civil damages as a result of any negligent or intentional act or  
omission of the direct service worker or licensed and/or  
certified agency.

C. Notwithstanding any other provision of law, licensed  
and/or certified agencies that employ or contract direct service  
workers shall be liable for acts or omissions of the direct  
service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S.  
37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health  
and Hospitals, Bureau of Health Services Financing, LR 38:3179  
(December 2012), amended LR 42:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding these substantive amendments to the proposed Rule. A public hearing on these substantive changes to the proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary